

05/30/2001 01:51:25 PM

Page 1

2001 DRAFTING REQUEST**Bill**Received: **04/17/2001**Received By: **kenneda**Wanted: **As time permits**

Identical to LRB:

For: **Carol Roessler (608) 266-5300**By/Representing: **Herself**This file may be shown to any legislator: **NO**Drafter: **kenneda**May Contact: **LFB, Leg Council**

Addl. Drafters:

Subject: **Health - miscellaneous**Extra Copies: **ISR**Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Prescription drugs for elderly program

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /? | kenneda | wjackson | | | | | S&L |
| | 04/25/2001 | 04/26/2001 | | | | | |
| /P1 | | | pgreensl | | lrb_docadmin | | S&L |
| | | | 04/26/2001 | | 04/26/2001 | | |

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| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|------------------------|------------------------|----------------|----------------------------|----------------------------|-----------------|
| /1 | kenneda 05/24/2001 | wjackson 05/24/2001 | rschluet 05/24/2001 | _____ | lrb_docadmin 05/24/2001 | lrb_docadmin 05/30/2001 | |

FE Sent For: **05/30/2001.**

<END>

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| /P1 | | | pgreensl 04/26/2001 | _____ | lrb_docadmin 04/26/2001 | | S&L |

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| /? | kenneda 04/25/2001 | wjackson 04/26/2001 | | | | | S&L |
| /P1 | | 1 WLj 5/24 pgreensl 04/26/2001 | | | lrb_docadmin 04/26/2001 | | S&L |

5-29-1 5-24-1

FE Sent For:

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2001 DRAFTING REQUEST

Bill

Received: 04/17/2001

Received By: kenneda

Wanted: As time permits

Identical to LRB:

For: Legislative Reference Bureau 266-0137

By/Representing: Debora Kennedy

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact: LFB, Leg Council

Addl. Drafters:

Subject: Health - miscellaneous

Extra Copies: ISR

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

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| /? | kenneda 04/25/2001 | wjackson 04/26/2001 | | | | | S&L |
| /P1 | | | pgreensl 04/26/2001 | | lrb docadmin 04/26/2001 | | |

FE Sent For:

<END>

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Identical to LRB:

For: **Legislative Reference Bureau 266-0137**By/Representing: **Debora Kennedy**This file may be shown to any legislator: **NO**Drafter: **kenneda**May Contact: **LFB, Leg Council**

Addl. Drafters:

Subject: **Health - miscellaneous**Extra Copies: **ISR**Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Prescription drugs for elderly program

Instructions:

See Attached

Please e-mail to
Laura Rose, Dick Sweet
and Rachel Carroll
Thank you.

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|--------------|----------------|-----------------|---------------|----------------|------------------|-----------------|-----------------|
| 1? | kenneda | PL WLJ 4/26 | 4/26 PG/BF | 4/26 PS/KS | | | |

FE Sent For:

<END>

Instructions for Sen. Raskin's prescription drug bill: 4/17/01

2001 Prescription Drug Proposal Comparisons

| | Option A | Option B | Option C | Option D | Option E | Option F | AB 120 | SSA 1 to SB 1 |
|--|----------|----------|----------|----------|----------|----------|---------|---------------|
| Income eligibility* | 225% | 225% | 200% | 200% | 135% | 185% | 185% | 300% |
| Estimated # eligible | 237,000 | 237,000 | 196,000 | 196,000 | 171,000 | 171,000 | 171,000 | 335,000 |
| Estimated # to enroll | 118,000 | 118,000 | 98,000 | 98,000 | 85,000 | 85,000 | 90,000 | 170,000 |
| Deductible | \$750 | \$750 | \$750 | \$750 | \$750 | \$750 | \$840 | \$500 |
| Income at which exempt from the deductible* | 125% | 110% | 125% | 110% | 125% | 110% | 0% | 175% |
| Estimated # of enrolled that would be exempt | 28,000 | 15,000 | 28,000 | 15,000 | 28,000 | 15,000 | - | 76,000 |
| Copay for those required to pay deductible | | | | | | | | |
| Brand | \$20 | \$20 | \$20 | \$20 | \$20 | \$20 | \$20 | \$10 |
| Generic | \$10 | \$10 | \$10 | \$10 | \$10 | \$10 | \$10 | \$5 |
| Copay for those not required to pay deductible | | | | | | | | |
| Brand | \$10 | \$10 | \$10 | \$10 | \$10 | \$10 | n/a | \$10 |
| Generic | \$5 | \$5 | \$5 | \$5 | \$5 | \$5 | n/a | \$5 |
| Spenddown Provision | yes | yes | yes | yes | yes | yes | no | yes |
| Estimated Cost (in millions)** | \$44.2 | \$37.2 | \$39.2 | \$32.1 | \$36.2 | \$29.1 | \$26.4 | \$105.9 |
| Enrollment Fee | \$20 | \$20 | \$20 | \$20 | \$20 | \$20 | \$25 | \$20 |

* as a percentage of the federal poverty level
 ** Estimate of AB 120 does not reflect costs incurred under MA

Sum certain biennial approx
 Quarterly reports - see Raskin expenditure
 calendar

\$2.4
 admin costs

State associated
 plan every
 (does not include
 MA prior authority
 limits)

~~\$2,000,000~~
 \$2,000,000 startup for DHPS (1/1/01)
 Query 1, 2002 start date
 Payment rate MA+5
 Report to legislative if law changes

4/13/01 Laura Rose, Rachel Carabell, DAK

Proposals for Carol Roessler - Prescription Drugs

Enrollment fee \$20

RE: What drives cost

amt of deductible

Extent to wh/ you exempt from deductible

amt of deductible - higher it is, fewer people get benefit

but still get rebate revenue

Higher copay (2/3 drugs purchased are generic; 1/3 brand name, but really 50-50)

Exempt people below 125% from deductible

Applic. fee \$20 (don't get anything by higher amt)

Deductible \$150 (is in middle of Wrecked + SBI)

Copay Non-deductible Deductible

-125%

5-10

10-20

Upper limit of eligib. - 200% of poverty

| | | | |
|------|---------|-----|--------|
| 185% | 96,000 | 175 | Single |
| | 79,000 | | couple |
| 200 | 105,000 | 200 | |
| | 95,000 | | |
| 225 | 120 | 241 | |
| | 121 | | |
| 300% | 152,000 | 339 | |
| | 137,000 | | |

Can have spend down from 200% or 185%

| Income | single | couple |
|-----------|----------|----------|
| 185% pov. | \$15,842 | \$21,479 |
| 200 | 17,180 | 23,220 |
| 225 | 19,328 | 26,123 |
| 300 | 25,770 | 34,830 |

AB 120

AWP - 5

MA

AWP - 10

GOWMA

AWP - 15

SBI

MA + 5

Prior authority - sec. of rebate agreements

Since '99 DHFS looks at therapy value

of older v. newer drugs - when there's
a therapeutically equiv. drug, DHFS
puts higher drug on p.a. + pt. doesn't
get more expensive until has tried less
expensive first

(therapeutically equivalent)

v.

generic substitution

Thursday, if possible

2001 - 2002 LEGISLATURE

3107/PI
LRB-12848

DAK:wlj:ek

D-NOTE

2001 ASSEMBLY BILL 120

February 13, 2001 - Introduced by Representatives WIECKERT, FRISKE, GRONEMUS, RHOADES, PETTIS, KRAWCZYK, PETROWSKI, LOEFFELHOLZ, D. MEYER, LEIBHAM, J. FITZGERALD, TOWNSEND, REYNOLDS, LIPPERT, MCCORMICK, BIES, AINSWORTH, ALBERS, FREESE, GUNDERSON, GUNDRUM, HOVEN, HUNDERTMARK, JESKEWITZ, JOHNSRUD, KAUFERT, KESTELL, KREIBICH, F. LASEE, M. LEHMAN, MUSSER, NASS, OLSEN, OTT, OWENS, SERATTI, SKINDRUD, STONE, SYKORA, TRAVIS, UNDERHEIM, URBAN, VRAKAS, WADE and WARD, cosponsored by Senators ROSENZWEIG, HARSDFORF, S. FITZGERALD, DARLING, SCHULTZ and ROESSLER. Referred to Committee on Health.

regenerate

1 AN ACT *to amend* 49.47 (4) (b) 2m. b., 49.47 (4) (b) 2r., 49.47 (4) (b) 2w., 49.47 (4)
2 (b) 3., 49.47 (4) (c) 1., 49.47 (4) (c) 3. and 49.47 (4) (i) 2. (intro.); and *to create*
3 20.435 (4) (bv), 20.435 (4) (j), 20.435 (4) (jb), 49.45 (48), 49.47 (4) (aq) and 49.688
4 of the statutes; ~~relating to: expanding medical assistance income eligibility~~
5 ~~requirements for elderly persons~~ requiring pharmacies and pharmacists, as a
6 condition of medical assistance participation, to charge elderly, low-income
7 persons for prescription drugs no more than specific amounts; specifying
8 requirements for rebate agreements between the department of health and
9 family services and drug manufacturers; ~~limiting prior authorization~~
10 ~~requirements under medical assistance~~; requiring the exercise of rule-making
11 authority; making appropriations; and providing penalties.

Analysis by the Legislative Reference Bureau

Under current state law, pharmacies and pharmacists that are certified providers of medical assistance (MA) services are reimbursed, at a rate established by the department of health and family services (DHFS), for providing certain prescription drugs to MA recipients. Under the MA program, numerous prescription

ASSEMBLY BILL 120

~~drugs must be authorized by DHFS prior to being dispensed to MA recipients.~~ Under current federal law, persons entitled to coverage under part B of medicare do not receive coverage for prescription drugs for outpatient care as a benefit.

Under current law, an individual who is 65 years of age or older, blind, or permanently disabled, is eligible to receive MA if he or she meets certain income and asset requirements. Currently, to satisfy the income requirements for MA eligibility, an individual who is 65 years of age or older, blind, or permanently disabled must have an income that does not exceed 133.33% of the maximum payment amount under the former aid to families with dependent children (AFDC) program or the combined benefit amount available under the federal supplemental security income (SSI) program.

Beginning March 1, 2002, this bill increases to 100% of the federal poverty level the maximum income level for eligibility for MA for individuals who are 65 years of age or older, blind, or permanently disabled.

This bill provides that, beginning March 1, 2002, persons who have applied for and have been found by DHFS to be eligible for prescription drug assistance and who have paid an annual enrollment fee of \$25 may use a card, issued by DHFS, to obtain certain prescription drugs for outpatient care at a rate that is the average wholesale price minus 5% or the maximum allowable cost, as determined by DHFS, whichever is less, plus a pharmacy dispensing fee. After an eligible person has paid a deductible by expending \$840 in a 12-month period for prescription drugs at this reduced rate, the person may obtain additional prescription drugs in that period by paying a copayment of \$10 for each generic drug and a copayment of \$20 for each drug that is not a generic drug. Persons who are eligible to obtain prescription drugs for these reduced charges are state residents who are at least 65 years of age, are not MA recipients, and have household incomes, as determined by DHFS, that do not exceed 185% of the federal poverty line for a family the size of the persons' eligible families. As a condition of participation by a pharmacy or pharmacist in the MA program, the pharmacy or pharmacist may not charge persons who are eligible for prescription drug assistance more than these amounts; as a part of the costs chargeable for the deductible, the pharmacy or pharmacist may include a dispensing fee but may not charge a dispensing fee after the deductible is met. If a person who is eligible has other available coverage for prescription drugs, the program does not apply to the costs for prescription drugs available under that other coverage.

Under the bill, DHFS or an entity with which DHFS contracts may enter with drug manufacturers into rebate agreements that are modeled on federal medicaid rebate agreements, under which the manufacturer must make payments to the state treasurer for deposit in the general fund for the manufacturer's drugs that are prescribed and purchased under the program. The amount of the rebate payment under the agreement is required to be determined by the method that is specified under federal medicaid rebate agreements. The amounts of the rebate payments must, in turn, together with general purpose revenues, be paid by DHFS to pharmacies or pharmacists that have reduced charges for prescription drugs for the eligible persons. Payment is at the average wholesale price minus 5% or the maximum allowable cost, as determined by DHFS, whichever is less, minus any

ASSEMBLY BILL 120

copayment made, plus a dispensing fee. If a manufacturer enters into a rebate agreement, DHFS may not, after February 28, 2002, and before March 1, 2004, expand the prior authorization requirements under the MA program or under the prescription drug program created under the bill for prescription drugs manufactured by that manufacturer beyond those prior authorization requirements in effect under the MA program on March 1, 2002.

Under the bill, DHFS is authorized to enter into a contract with an entity to perform DHFS' duties and exercise its powers, other than rule making, under the prescription drug assistance program. DHFS must, under the bill, promulgate rules that specify the criteria to be used to determine household income for persons eligible for prescription drug assistance. Prescription drugs for which the reduced charges must be made are those that are available as an MA benefit and that are manufactured by a manufacturer that enters into a rebate agreement with DHFS. DHFS must calculate and transmit to pharmacies and pharmacists that participate in the MA program the prices at the discounted rate that must be charged to certain eligible persons in meeting the deductible for prescription drugs and must periodically update this information and transmit the updated information to pharmacies and pharmacists. DHFS must monitor compliance by pharmacies and pharmacists with the requirement to charge eligible persons for the specified prescription drugs at the reduced amounts and annually report to the legislature concerning the compliance. DHFS also must promulgate rules that establish prohibitions against fraud that are substantially similar to MA fraud provisions; the bill specifies penalties applicable to violations of these prohibitions. If federal law is changed to provide coverage for outpatient prescription drugs as a benefit under medicare or another program, DHFS must provide a report to the legislature that analyzes the differences between the federal program and the program under the bill and that provides recommendations concerning alignment, if any, of the differences. The bill appropriates \$2,000,000 in general purpose revenues in fiscal year 2001-02 to the joint committee on finance and authorizes DHFS to submit a proposal for review and approval by the department of administration and by the joint committee on finance, for expenditure of these moneys for administration of the program.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
- 2 the following amounts for the purposes indicated:

ASSEMBLY BILL 120

SECTION 1

1
2 **20.435 Health and family services, department**
3 **of**

2001-02 2002-03

4 (4) HEALTH SERVICES PLANNING, REGULATION AND
5 DELIVERY; HEALTH CARE FINANCING

6 (bv) Prescription drug assistance for
7 elderly; aids

GPR

DAK

- 0 -
~~8,200,000~~

39,200,000
~~26,400,000~~

8 SECTION 2. 20.435 (4) (bv) of the statutes is created to read:

Biennially,

9 20.435 (4) (bv) *Prescription drug assistance for elderly; aids.* The amounts in
10 the schedule for payment to pharmacies and pharmacists under s. 49.688 (3) for
11 prescription drug assistance for elderly persons.

12 SECTION 3. 20.435 (4) (j) of the statutes is created to read:

13 20.435 (4) (j) *Prescription drug assistance for elderly; manufacturer rebates.*

14 All moneys received from rebate payments by manufacturers under s. 49.688 (3), to
15 be used for payment to pharmacies and pharmacists under s. 49.688 (3) for
16 prescription drug assistance for elderly persons.

17 SECTION 4. 20.435 (4) (jb) of the statutes is created to read:

18 20.435 (4) (jb) *Prescription drug assistance for elderly; enrollment fees.* All

19 moneys received from payment of enrollment fees under s. 49.688 (3), to be used for
20 administration of the program under s. 49.688.

21 SECTION 5. 49.45 (48) of the statutes is created to read:

22 49.45 (48) PRIOR AUTHORIZATION FOR LEGEND DRUGS. If, after February 28, 2002,
23 and before March 1, 2004, a manufacturer has in force a rebate agreement under s.
24 49.688 (7), the department may not during that period expand the prior

ASSEMBLY BILL 120

1 authorization requirements for prescription drugs manufactured by the
2 manufacturer for which coverage is provided under s. 49.46 (2) (b) 6. h. beyond those
3 prior authorization requirements that are in effect on March 1, 2002.

4 **SECTION 6.** 49.47 (4) (aq) of the statutes is created to read:

5 49.47 (4) (aq) 1. Subject to subd. 2., an individual who does not meet the
6 limitation on income under par. (c) is eligible for medical assistance if the individual's
7 income does not exceed 100% of the federal poverty level, and the individual is 65
8 years of age or older or is blind or totally and permanently disabled, as defined under
9 federal Title XVI.

10 2. If a federal waiver is necessary to provide medical assistance to individuals
11 specified in subd. 1., the department shall request a waiver from the secretary of the
12 federal department of health and human services before providing medical
13 assistance under this paragraph.

14 **SECTION 7.** 49.47 (4) (b) 2m. b. of the statutes is amended to read:

15 49.47 (4) (b) 2m. b. For persons who are eligible under par. (a) 3. or 4. or (aq),
16 motor vehicles are exempt from consideration as an asset to the same extent as
17 provided under 42 USC 1381 to 1385.

18 **SECTION 8.** 49.47 (4) (b) 2r. of the statutes is amended to read:

19 49.47 (4) (b) 2r. For a person who is eligible under par. (a) 3. or 4. or (aq), the
20 value of any burial space or agreement representing the purchase of a burial space
21 held for the purpose of providing a place for the burial of the person or any member
22 of his or her immediate family.

23 **SECTION 9.** 49.47 (4) (b) 2w. of the statutes is amended to read:

ASSEMBLY BILL 120

SECTION 9

1 ~~49.47 (4) (b) 2w. For a person who is eligible under par. (a) 3. or 4. or (aq), life~~
2 insurance with cash surrender values if the total face value of all life insurance
3 policies is not more than \$1,500.

4 **SECTION 10.** ~~49.47 (4) (b) 3. of the statutes is amended to read:~~

5 ~~49.47 (4) (b) 3. For a person who is eligible under par. (a) 3. or 4. or (aq), funds~~
6 set aside to meet the burial and related expenses of the person and his or her spouse
7 in an amount not to exceed \$1,500 each, minus the sum of the cash value of any life
8 insurance excluded under subd. 2w. and the amount in any irrevocable burial trust
9 under s. 445.125 (1) (a).

10 **SECTION 11.** ~~49.47 (4) (c) 1. of the statutes is amended to read:~~

11 ~~49.47 (4) (c) 1. Except as provided in ~~par. pars.~~ (am) and (aq) and as limited by~~
12 subd. 3., eligibility exists if income does not exceed ~~133 1/3%~~ 133.33% of the
13 maximum aid to families with dependent children payment under s. 49.19 (11) for
14 the applicant's family size or the combined benefit amount available under
15 supplemental security income under 42 USC 1381 to 1383c and state supplemental
16 aid under s. 49.77 whichever is higher. In this subdivision "income" includes earned
17 or unearned income that would be included in determining eligibility for the
18 individual or family under s. 49.19 or 49.77, or for the aged, blind or disabled under
19 42 USC 1381 to 1385. "Income" does not include earned or unearned income which
20 would be excluded in determining eligibility for the individual or family under s.
21 49.19 or 49.77, or for the aged, blind or disabled individual under 42 USC 1381 to
22 1385.

23 **SECTION 12.** ~~49.47 (4) (c) 3. of the statutes is amended to read:~~

24 ~~49.47 (4) (c) 3. Except as provided in ~~par. pars.~~ (am) and (aq), no person is~~
25 eligible for medical assistance under this section if the person's income exceeds the

SECTION 12

(c) "Program payment rate" means the rate of payment made for the identical drug specified under §. 49.46 (2) (b) 6, h., plus 5%.

ASSEMBLY BILL 120

SECTION 14

~~1 enrollment fee payment, for a determination of eligibility and issuance of a~~
~~2 prescription drug card for purchase of prescription drugs under this section.~~

INSERT 8-3 ✓

3 (3) ~~(3)~~ Program participants shall pay all of the following:

4 (a) For each 12-month benefit period, a program enrollment fee of \$~~25~~. 20 ✓

5 ~~For each 12-month benefit period, a deductible for each person of \$840.~~
 INSERT 8-5 ✓

6 After payment of ~~the~~ deductible under ~~sub. 2~~, any applicable all of the following: par. (b)

7 (c) a. A copayment of \$10 for each prescription drug that bears only a generic
 8 name.

9 b. A copayment of \$20 for each prescription drug that does not bear only a
 10 generic name.

INSERT 8-10 ✓

11 (b) Notwithstanding s. 49.002, if a person who is eligible under this section has
 12 other available coverage for payment of a prescription drug, this section applies only
 13 to costs for prescription drugs for the person that are not covered under the person's
 14 other available coverage.

15 (4) The department shall devise and distribute a form for application for the
 16 program under sub. (2), shall determine eligibility for each 12-month benefit period
 17 of applicants, and shall issue to eligible persons a prescription drug card for use in
 18 purchasing prescription drugs, as specified in sub. (5). The department shall
 19 promulgate rules that specify the criteria to be used to determine annual household
 20 income under sub. (2). (a) 4. and (b) and (3) (b) 1. and (c) 1. and 20 ✓

21 (5) (a) Beginning ~~March~~ July 1, 2002, as a condition of participation by a pharmacy or
 22 pharmacist in the program under ~~ss.~~ ✓ 49.45, ✓ 49.46, or ✓ 49.47, the pharmacy or
 23 pharmacist may not charge a person who presents a valid prescription order and a
 24 card indicating that he or she meets eligibility requirements under sub. (2) an

ASSEMBLY BILL 120

1 amount for a prescription drug under the order that exceeds the ~~amounts specified~~
222 in sub. (6) (a) following:

3 (6) (a) The charge for a prescription drug shall be calculated at the average
4 wholesale price minus 5% or the maximum allowable cost, as determined by the
5 department, whichever is less.

6 (b) The amounts that a pharmacy or pharmacist may charge a person specified
7 in sub. (2) in a calendar year period for a prescription drug are the following:

8 1. If applicable, a deductible, as specified in sub. (3) (a) 2., for a prescription
9 drug that is charged at the rate specified in par. (a), plus a dispensing fee that is equal
10 to the dispensing fee permitted to be charged for prescription drugs for which
11 coverage is provided under s. 49.46 (2) (b) 6. h.

12 2. After the deductible under subd. 1. is charged, the copayment, as applicable,
13 that is specified in sub. (3) (a) 3. a. or b.

INSERT
9-13

14 (b) (a) The department shall calculate and transmit to pharmacies and
15 pharmacists that are certified providers of medical assistance amounts that may be
16 used in calculating charges under par. (a). The department shall periodically update
17 this information and transmit the updated amounts to pharmacies and pharmacists.

18 (7) The department or an entity with which the department contracts may
19 enter into a rebate agreement that is modeled on the rebate agreement specified
20 under 42 USC 1396r-8 with a drug manufacturer that sells drugs for prescribed use
21 in this state. The rebate agreement, if negotiated, shall include all of the following
22 as requirements:

23 (a) That the manufacturer shall make rebate payments for each prescription
24 drug of the manufacturer that is prescribed for persons who are eligible under sub.

ASSEMBLY BILL 120

SECTION 14

1 (2), to the state treasurer to be credited to the appropriation under s. 20.435 (4) (j),
 2 each calendar quarter or according to a schedule established by the department.

INSERT 10-2

3 (b) That the amount of the rebate payment shall be determined by a method
 4 specified in 42 USC 1396r-8 (c).

5 (b) 1. or 2. or who, under sub. (3) (b) 1., are not required to pay a deductible
 6 ~~March~~ ^{July} 1, 2002, the department shall, under a schedule that is identical to that used
 7 by the department for payment of pharmacy provider claims under medical
 8 assistance, provide to pharmacies and pharmacists payments for prescription drugs
 9 sold by the pharmacies or pharmacists to persons eligible under sub. (2) who have
 10 paid the deductible specified under sub. (3) ~~1. or 2.~~ The payment for each prescription
 11 drug under this subsection shall be at the rate specified in sub. (5) (a), minus the
 12 ~~amount of a copayment charged~~ ^{any paid by the person} under sub. (5) (a), plus a dispensing fee, as
 13 specified in sub. (5) (a) 1. The department shall devise and distribute a ^{claim} form for
 14 reports by pharmacies and pharmacists under this subsection and may limit
 15 payment under this subsection to those prescription drugs for which payment claims
 16 are submitted by pharmacies or pharmacists directly to the department. The
 17 department may apply to the program under this section the same utilization and
 18 cost control procedures that apply under rules promulgated by the department to
 19 medical assistance under subch. IV.

20 (b) 8. The department shall, under methods promulgated by the department by
 21 rule, monitor compliance by pharmacies and pharmacists that are certified providers
 22 of medical assistance with the requirements of sub. (5) and shall annually report to
 23 the legislature under s. 13.172 (2) concerning the compliance. The report shall
 24 include information on any pharmacies or pharmacists that discontinue
 and plus, if applicable, incentive payments that are similar to those provided under s. 49.45 (8v)!

ASSEMBLY BILL 120

1 participation as certified providers of medical assistance and the reasons given for
2 the discontinuance.

3 ③ ⑨ (10) (a) The department shall promulgate rules relating to prohibitions on
4 fraud that are substantially similar to applicable provisions under s. 49.49 (1) (a).

5 (b) A person who is convicted of violating a rule promulgated by the department
6 under par. (a) in connection with that person's furnishing of prescription drugs under
7 this section may be fined not more than \$25,000, or imprisoned for not more than 7
8 years and 6 months, or both.

9 (c) A person other than a person specified in par. (b) who is convicted of violating
10 a rule promulgated by the department under par. (a) may be fined not more than
11 \$10,000, or imprisoned for not more than one year, or both.

12 ③ ⑩ (11) If federal law is amended to provide coverage for prescription drugs for
13 outpatient care as a benefit under medicare or to provide similar coverage under
14 another program, the department shall submit to appropriate standing committees
15 of the legislature under s. 13.172 (3) a report that contains an analysis of the
16 differences between such a federal program and the program under this section and
17 that provides recommendations concerning alignment, if any, of the differences.

18 (12) After February 28, 2002, and before March 1, 2004, the department may
19 not subject a manufacturer that enters into a rebate agreement under sub. (7) to prior
20 authorization requirements for a prescription drug under this section that are an
21 expansion of prior authorization requirements in effect under the medical assistance
22 program on March 1, 2002.

23 ③ ⑪ ⑫ (13) Except as provided in subs. (9) to (12), and except for the department's
24 rule-making requirements and authority, the department may enter into a contract

ASSEMBLY BILL 120

SECTION 14

1 with an entity to perform the duties and exercise the powers of the department under
2 this section.

3 **SECTION 15. Nonstatutory provisions.**

4 (1) ~~PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION.~~ Before ~~July 1,~~

5 ~~2001,~~ the department of health and family services may develop and submit to the
6 department of administration a proposal for expenditure of the funds appropriated
7 under section 20.865 (4) (a) of the statutes for administration of the prescription drug
8 assistance for ^{low-income} elderly program under section 49.688 of the statutes, as created by this

9 act. The department of administration may approve, disapprove, or modify and
10 approve any proposal it receives under this subsection. If the department of
11 administration approves the proposal, the department shall submit the proposal,
12 together with any modifications, to the cochairpersons of the joint committee on
13 finance. If the cochairpersons of the committee do not notify the secretaries of
14 administration and health and family services within 14 working days after
15 receiving the proposal that the cochairpersons have scheduled a meeting for the
16 purpose of reviewing the proposal, the secretary of administration may transfer from
17 the appropriation under section 20.865 (4) of the statutes to the appropriation under

18 section 20.435 (4) (a) of the statutes the amount specified in the proposal or any
19 proposed modifications of the proposal for expenditure as specified in the proposal
20 or any proposed modifications of the proposal and may approve any position
21 authority specified in the proposal or any proposed modifications of the proposal. If,
22 within 14 working days after receiving the proposal, the cochairpersons notify the
23 secretaries of administration and health and family services that the cochairpersons
24 have scheduled a meeting for the purpose of reviewing the proposal, the secretary of
25 administration may not transfer any amount specified in the proposal or any

the first day of the first
month following publication
of the biennial budget act

(a)

ASSEMBLY BILL 120

1 proposed modifications of the proposal from the appropriation under section 20.865
(2) (a) of the statutes and may not approve any position authority specified in the
3 proposal or any proposed modifications of the proposal, except as approved by the
4 committee.

SECTION 16. Appropriation changes.

(6) (1) ^{CS} LOW-INCOME PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. In the schedule
7 under section 20.005 (3) of the statutes for the appropriation to the joint committee
8 on finance under section ~~20.865~~ ^{20.435} (4) (a) of the statutes, as affected by the acts of 1999,
9 the dollar amount is increased by ~~\$2,000,000~~ ^{\$1,000,000} for fiscal year 2001-02 to increase
10 funding for administration of the prescription drug assistance for elderly program
11 under section 49.688 of the statutes, as created by this act.

SECTION 17. ~~Initial applicability.~~

13 (1) ~~MEDICAL ASSISTANCE ELIGIBILITY.~~ The treatment of section 49.47 (4) (aq), (b)
14 2m. b., 2r., 2w., and 3., ~~(c) 1. and 3., and (i) 2. (intro.)~~ of the statutes first applies to
15 ~~eligibility determinations made for medical assistance on the effective date of this~~
16 ~~subsection.~~

17 SECTION 18. Effective date. This act takes effect on the 2nd day after
18 publication of the biennial budget act, except as follows:

19 (1) ^{CS} LOW-INCOME PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY. The treatment of section 20.435
20 (4) (bv) of the statutes takes effect on ~~March~~ ^{July} 1, 2002.

21 (2) ~~MEDICAL ASSISTANCE ELIGIBILITY.~~ The treatment of section 49.47 (4) (aq), (b)
22 2m. b., 2r., 2w., and 3., ~~(c) 1. and 3., and (i) 2. (intro.)~~ of the statutes and SECTION 17
23 (1) of this act take effect on March 1, 2002.

(END)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3107/?dn

.....
DAK: WJ:

To Rachel Carabell, Laura Rose, and Dick Sweet:

A number of issues arose in the course of drafting this bill. I would very much appreciate your reviewing the bill and, if possible, answering the following questions:

1. Rachel, are the amounts in the schedule that I have listed correct, with a start date of July 1, 2002?

2. Are the requirements for the quarterly report under s. 49.688 (11) [✓]appropriate?

3. Under Senate Substitute Amendment 1 to 2001 Senate Bill 1, and under this bill, pharmacies only get rebate payments for drugs sold after the deductible is paid, but participants get a discount for payment of the deductible (except the spend-down deductible); okay?

4. I have included reference to incentive payments under ^{s.}49.688 (7); okay?

5. By what time should DHFS submit its proposal to DOA for more administration money? Before July 1, 2002? Just after passage of the budget bill? Other?

6. In general, this bill treats the dispensing fee in the same manner as SSA 1 to SB¹ 1; however, since the "program payment rate" [✓]as defined under s. 49.688 (1) (e) is the MA rate, plus 5%, and since the MA rate apparently includes a dispensing fee, I think that the treatment of the dispensing fee is somewhat confusing. Please look at the following to see if the treatment is appropriate:

a. Should pharmacies be able to charge program participants, for a deductible, both the program payment rate and a dispensing fee (see s. 49.688 (5))?

* b. Should DHFS be paying the dispensing fee, as well as the program payment rate, to pharmacies (see s. 49.688 (7))?

Thanks very much.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

(P. 10)

SENATE BILL 1

This bill provides that, beginning ~~March~~ ^{July} 1, 2002, persons who have applied for and have been found by DHFS to be eligible for prescription drug assistance and who have paid an annual enrollment fee of \$20 may use a card, issued by DHFS, to obtain certain prescription drugs for outpatient care at a rate that is not more than the medical assistance rate plus 5%, plus a pharmacy dispensing fee. After an eligible person has paid a deductible by expending ~~\$500~~ ^{\$750} in a 12-month period for prescription drugs at this reduced rate, the person may obtain additional prescription drugs in that period by paying a copayment of ~~\$3~~ ^{\$10} for each generic drug and a copayment of ~~\$10~~ ^{\$20} for each drug that is not a generic drug. Persons who are eligible to obtain prescription drugs for these reduced charges are state residents who are at least 65 years of age, are not MA recipients, and have household incomes, as determined by DHFS, that do not exceed ~~200%~~ ²⁰⁰ of the federal poverty line for a family the size of the persons' eligible families. Persons who are otherwise eligible but who have household incomes that do not exceed ~~150%~~ ¹²⁵ of the federal poverty line for a family the size of the persons' eligible families may obtain prescription drugs by paying ~~the~~ \$5 and \$10 copayments without first paying the ~~\$500~~ ⁷⁵⁰ deductible. Persons who are otherwise eligible but who have household incomes that exceed ~~300%~~ ²⁰⁰ of the federal poverty line for a family the size of the person's eligible family must first, in a 12-month period, pay for prescription drugs at market rate, a deductible that equals the difference between the person's annual household income and ~~300%~~ ⁷⁵⁰ of the federal poverty line; after this is paid, the persons must pay an additional ~~\$500~~ ⁷⁵⁰ deductible for prescription drugs at the reduced rate; and the persons may then obtain additional prescription drugs in the remaining amount of the 12-month period by paying ~~the generic and non-generic drug~~ ^{the generic and non-generic drug} copayments. As a condition of participation by a pharmacy or pharmacist in the MA program, the pharmacy or pharmacist may not charge persons who are eligible for prescription drug assistance more than these amounts; as a part of the costs chargeable for the deductible, the pharmacy or pharmacist may include a dispensing fee, but may not charge a dispensing fee after the deductible is met. If a person who is eligible has other available coverage for prescription drugs, the program does not apply to the costs for prescription drugs available under that other coverage.

Under the bill, DHFS or an entity with which DHFS contracts must provide to drug manufacturers material designed for use in entering into rebate agreements that are modeled on federal medicaid rebate agreements, under which the manufacturer must make payments to the state treasurer for deposit in the general fund for the manufacturer's drugs that are prescribed and purchased under the program. The amount of the rebate payment under the agreement is required to be determined by the method that is specified under the federal medicaid rebate agreements. The amounts of the rebate payments must, in turn, together with general purpose revenues under a ~~sanctioned~~ ^{sanctioned} appropriation created under the bill, be paid by DHFS to pharmacies or pharmacists that have reduced charges for prescription drugs for the eligible persons. Payment is at the medical assistance rate plus 5%, minus any copayment made, plus a dispensing fee.

Under the bill, DHFS is authorized to enter into a contract with an entity to perform DHFS' duties and exercise its powers, other than rule making, under the

of \$10 for each drug that is a generic drug and \$20 for each drug that is not a generic drug

biennial

SENATE BILL 1

INSERT A

P-2
7
2

prescription drug assistance program. DHFS must, under the bill, promulgate rules that specify the criteria to be used to determine household income for persons eligible for prescription drug assistance. Prescription drugs for which the reduced charges must be made are those that are available as an MA benefit and that are manufactured by a manufacturer that enters into a rebate agreement with DHFS. DHFS must calculate and transmit to pharmacies and pharmacists that participate in the MA program the prices at the medical assistance rate plus 5% that must be charged to certain eligible persons in meeting the deductible for prescription drugs and must periodically update this information and transmit the updated information to pharmacies and pharmacists. DHFS must monitor compliance by pharmacies and pharmacists with the requirement to charge eligible persons for the specified prescription drugs at the reduced amounts and annually report to the legislature concerning the compliance. DHFS also must promulgate rules that establish prohibitions against fraud that are substantially similar to MA fraud provisions; the bill specifies penalties applicable to violations of these prohibitions.

If federal law is changed to provide coverage for outpatient prescription drugs as a benefit under medicare or another program, DHFS must provide a report to the legislature that analyzes the differences between the federal program and the program under the bill and that provides recommendations concerning alignment, if any, of the differences. The bill appropriates \$1,000,000 in general purpose revenues in fiscal year 2001-01 to DHFS for administration of the program. Further, the bill appropriates \$1,000,000 in general purpose revenues to the joint committee on finance and authorizes DHFS to submit a proposal for review and approval by the department of administration and by the joint committee on finance, for expenditure of these moneys.

Lastly, under the bill, DHFS must request from the secretary of the federal department of health and human services a waiver of federal medicaid laws to permit DHFS to conduct a project to expand MA eligibility for persons who are eligible for and enrolled in Medicare and persons whose annual household incomes do not exceed 300% of the federal poverty line for a family the size of the persons' eligible families. Under the waiver, the expanded MA eligibility entitles an eligible person, after paying a \$20 annual enrollment fee, to purchase a prescription drug for a copayment, as specified in the bill, for that prescription drug. The pharmacy or pharmacist who sells the drug at this reduced price receives reimbursement for the difference between the copayment and the medical assistance reimbursement amount from DHFS, from moneys received by DHFS under rebate agreements with drug manufacturers.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1

SECTION 1. 20.435 (4) (bv) of the statutes is created to read:

End B
INSERT A

no # DHFS must also report quarterly to the legislature concerning expenditures of general purpose revenues, revenues from manufacturer rebates, and caseloads under the prescription drug assistance program.

3. The person is not a recipient of medical assistance.

4. The person's annual household income, as determined by the department, does not exceed 300% of the federal poverty line for a family the size of the person's eligible family.

5. The person pays the program enrollment fee specified in sub. (3) (a).

(b) A person to whom par. (a) 1. to 3. and 5. applies, but whose annual household income, as determined by the department, exceeds ~~300~~²⁰⁰% of the federal poverty line for a family the size of the persons' eligible family, is eligible to purchase a prescription drug at the amounts specified in sub. (5) (a) 4. only during the remaining amount of any 12-month period in which the person has first paid the annual deductible specified in sub. (3) (b) 2. a. in purchasing prescription drugs at the retail price and has then paid the annual deductible specified in sub. (3) (b) 2. b.

(3) Program participants shall pay all of the following:

(a) For each 12-month benefit period, a program enrollment fee of \$20.

INSERT 8-5

(b) 1. For each 12-month benefit period, for a person specified in sub. (2) (a), a deductible for prescription drugs of \$~~500~~⁷⁵⁰, except that a person whose annual household income, as determined by the department, is ~~175~~¹²⁵% or less of the federal poverty line for a family the size of the person's eligible family pays no deductible.

2. For each 12-month benefit period, for a person specified in sub. (2) (b), a deductible for prescription drugs that equals all of the following:

a. The difference between the person's annual household income and ~~300~~²⁰⁰% of the federal poverty line for a family the size of the person's eligible family.

b. ~~Seven~~^{Seventy} hundred dollars. ^{fifty}

(c) After payment of any applicable deductible under par. (b), all of the following:

End of INSERT
8-5

¶ 1. For each prescription drug that bears only a generic name, a copayment of \$10, except that, for a person whose annual household income, as determined by the department, is 125% or less of the federal poverty line for a family the size of the person's eligible family, a copayment of \$50.

¶ 2. For each prescription drug that does not bear only a generic name, a copayment of \$20, except that, for a person whose annual household income, as determined by the department, is 125% or less of the federal poverty line for a family the size of the person's eligible family, a copayment of \$10.

1. A copayment of \$5 for each prescription drug that bears only a generic name.

2. A copayment of \$10 for each prescription drug that does not bear only a generic name.

(d) Notwithstanding s. 49.002, if a person who is eligible under this section has other available coverage for payment of a prescription drug, this section applies only to costs for prescription drugs for the person that are not covered under the person's other available coverage.

(4) The department shall devise and distribute a form for application for the program under sub. (2), shall determine eligibility for each 12-month benefit period of applicants and shall issue to eligible persons a prescription drug card for use in purchasing prescription drugs, as specified in sub. (5). The department shall promulgate rules that specify the criteria to be used to determine household income under sub. (2) (a) 4. and (b) and (3) (b) 1.

(5) (a) Beginning March 1, 2002, as a condition of participation by a pharmacy or pharmacist in the program under s. 49.45, 49.46, or 49.47, the pharmacy or pharmacist may not charge a person who presents a valid prescription order and a card indicating that he or she meets eligibility requirements under sub. (2) an amount for a prescription drug under the order that exceeds the following:

1. For a deductible, as specified in sub. (3) (b) 1. and 2. b., the program payment rate, plus a dispensing fee that is equal to the dispensing fee permitted to be charged for prescription drugs for which coverage is provided under s. 49.46 (2) (b) 6. h.

2. After any applicable deductible under subd. 1. is charged, the copayment, as applicable, that is specified in sub. (3) (c) 1. or 2. No dispensing fee, as specified under subd. 1., may be charged to a person under this subdivision.

3. For a deductible, as specified in sub. (3) (b) 2. a., the retail price.

1 4. After the deductible under subd. 3. is charged, the copayment, as applicable,
2 that is specified in sub. (3) (c) 1. or 2. No dispensing fee, as specified under subd. 1.,
3 may be charged to a person under this subdivision.

4 ~~(b) The department shall calculate and transmit to pharmacies and~~
5 ~~pharmacists that are certified providers of medical assistance amounts that may be~~
6 ~~used in calculating charges under par. (a). The department shall periodically update~~
7 ~~this information and transmit the updated amounts to pharmacies and pharmacists.~~

INSERT 10-2

8 (6) The department or an entity with which the department contracts shall
9 provide to a drug manufacturer that sells drugs for prescribed use in this state
10 material designed for use by the manufacturer in entering into a rebate agreement
11 with the department or entity that is modeled on the rebate agreement specified
12 under 42 USC 1396r-8. A rebate agreement under this subsection shall include all
13 of the following as requirements:

14 (a) That the manufacturer shall make rebate payments for each prescription
15 drug of the manufacturer that is prescribed for and purchased by persons who meet
16 criteria under sub. (2) (a) ^{by} and ^{by} persons who meet criteria under sub. (2) (b) and have
17 paid the deductible under sub. (3) (b) 2. a., to the state treasurer to be credited to the
18 appropriation under s. 20.435 (4) (j), each calendar quarter or according to a schedule
19 established by the department.

20 ~~(b) That the amount of the rebate payment shall be determined by a method~~
21 ~~specified in 42 USC 1396r-8 (c).~~

22 ~~(7) From the appropriation accounts under s. 20.435 (4) (bv) and (j), beginning~~
23 ~~March 1, 2002, the department shall, under a schedule that is identical to that used~~
24 ~~by the department for payment of pharmacy provider claims under medical~~
25 ~~assistance, provide to pharmacies and pharmacists payments for prescription drugs~~

End of INSERT 10-2

(11) ¹³ Beginning October 1, 2002, the department shall by October 1, January 1, April 1, and July 1 annually submit to appropriate standing committees of the legislature under s. 13.172(3) a report concerning expenditures of general purpose revenues, receipt of revenues from manufacturers under rebate agreements, and program participant caseloads ¹⁴ under the program under this section.

INSERT 13-11

(C5) LOW-INCOME

1 (2) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADDITIONAL ADMINISTRATION. In
2 the schedule under section 20.005 (3) of the statutes for the appropriation to the joint
3 committee on finance under section 20.865 (4) (a) of the statutes, as affected by the
4 acts of 2001, the dollar amount is increased by \$1,000,000 for fiscal year 2001-02 to
5 increase funding for administration of the prescription drug assistance for elderly
6 program under section 49.688 of the statutes, as created by this act.

7 **SECTION 7. Effective dates; health and family services.** This act takes
8 effect on the 2nd day after publication of the biennial budget act, except as follows:

9 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY. The treatment of section 20.435
10 (4) (bv) of the statutes takes effect on March 1, 2002.

11 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3107/P1dn
DAK:wlj:kjf

April 26, 2001

To Rachel Carabell, Laura Rose, and Dick Sweet:

A number of issues arose in the course of drafting this bill. I would very much appreciate your reviewing the bill and, if possible, answering the following questions:

1. Rachel, are the amounts in the schedule that I have listed correct, with a start date of July 1, 2002?
2. Are the requirements for the quarterly report under s. 49.688 (11) appropriate?
3. Under Senate Substitute Amendment 1 to 2001 Senate Bill 1, and under this bill, pharmacies only get rebate payments for drugs sold after the deductible is paid, but participants get a discount for payment of the deductible (except the spend-down deductible); okay?
4. I have included reference to incentive payments under s. 49.688 (7); okay?
5. By what time should DHFS submit its proposal to DOA for more administration money? Before July 1, 2002? Just after passage of the budget bill? Other?
6. In general, this bill treats the dispensing fee in the same manner as SSA 1 to SB-1; however, since the "program payment rate," as defined under s. 49.688 (1) (e) is the MA rate, plus 5%, and since the MA rate apparently includes a dispensing fee, I think that the treatment of the dispensing fee is somewhat confusing. Please look at the following to see if the treatment is appropriate:
 - a. Should pharmacies be able to charge program participants, for a deductible, both the program payment rate and a dispensing fee (see s. 49.688 (5))?
 - b. Should DHFS be paying the dispensing fee, as well as the program payment rate, to pharmacies (see s. 49.688 (7))?

Thanks very much.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

5/15 From Rachel Carahall - Discussion of D-Note 3107/P1

- ① Amt in schedule should be changed, bec. delay in payment occurs before people meet deductibles
\$24,500,000
(Doesn't affect overall cost)
- ✓ ② Bec. approp. changes wd. be wiped out by budget bill, make eff date after pub. of budget bill
- ✓ ③ p. 10, l. 15 - second, rather than 1st mo.
- ✓ ④ #3 - is okay
- ✓ ⑤ #4 - check w/ Rosales - Yes
~~cost~~
- X ⑥ ^{duct} Program payment rate
Product payment rate
ma reimb for the estimated acquisition cost
Program payment rate - ~~the MA product reimb~~ + ^{cost} + ^{disp} 5% + a dispensing fee
reimb. for the ident. drug specific under for the cost of the drug plus 5% + a disp. fee
Take in Subsec (5) + (7) ref to dispensing fee

Kennedy, Debora

From: Carabell, Rachel
Sent: Wednesday, May 23, 2001 10:05 AM
To: Kennedy, Debora
Cc: Jermstad, Sara
Subject: Sen. Roessler's draft

Hi Debora,

Here are Senator Roessler's changes to her current draft:

- ✓ 1. Increase the enrollment fee to \$30 for those individual that would pay the deductible and \$15 for those that would not be required to pay the deductible.
- ✓ 2. The income at which individuals would be exempt from the deductible is 125% of the FPL (the current draft may already specify 125%)
- ✓ 3. Appropriately the first \$1.0 million from enrollment fee revenue for administrative costs. The remainder of any revenue collected would be used to offset benefit costs. *annually (yes)*
- ✓ 4. The payment rate is AWP-10% or MAC, whichever is less and a dispensing fee.
- ✓ 5. The amount to provide in 2002-03 is \$21.4 million GPR for benefits.

Let me know if you have any questions. Thanks.

Rachel Carabell
Legislative Fiscal Bureau
rachel.carabell@legis.state.wi.us
Phone: 608-266-3847

TODAY, by 3:00, if possible

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

regenerate

1 AN ACT *to create* 20.435 (4) (bv), 20.435 (4) (j), 20.435 (4) (jb) and 49.688 of the
2 statutes; **relating to:** requiring pharmacies and pharmacists, as a condition of
3 medical assistance participation, to charge elderly, low-income persons for
4 prescription drugs no more than specific amounts; specifying requirements for
5 rebate agreements between the department of health and family services and
6 drug manufacturers; requiring the exercise of rule-making authority; making
7 appropriations; and providing penalties.

Analysis by the Legislative Reference Bureau

Under current state law, pharmacies and pharmacists that are certified providers of medical assistance (MA) services are reimbursed, at a rate established by the department of health and family services (DHFS), for providing certain prescription drugs to MA recipients. Under current federal law, persons entitled to coverage under part B of medicare do not receive coverage for prescription drugs for outpatient care as a benefit.

This bill provides that, beginning July 1, 2002, persons who have applied for and have been found by DHFS to be eligible for prescription drug assistance and who have paid an annual enrollment fee of \$20 may use a card, issued by DHFS, to obtain certain prescription drugs for outpatient care at a rate that is not more than the ~~medical assistance rate plus 5%~~, plus a pharmacy dispensing fee. After an eligible

\$30

average wholesale price minus 5%, or the maximum allowable cost, as determined by DHFS, whichever is less

a \$15 annual enrollment fee and by paying

person has paid a deductible by expending \$750 in a 12-month period for prescription drugs at this reduced rate, the person may obtain additional prescription drugs in that period by paying a copayment of \$10 for each generic drug and a copayment of \$20 for each drug that is not a generic drug. Persons who are eligible to obtain prescription drugs for these reduced charges are state residents who are at least 65 years of age, are not MA recipients, and have household incomes, as determined by DHFS, that do not exceed 200% of the federal poverty line for a family the size of the persons' eligible families. Persons who are otherwise eligible but who have household incomes that do not exceed 125% of the federal poverty line for a family the size of the persons' eligible families may obtain prescription drugs by paying \$5 and \$10 copayments without first paying the \$750 deductible. Persons who are otherwise eligible but who have household incomes that exceed 200% of the federal poverty line for a family the size of the person's eligible family must first, in a 12-month period, pay for prescription drugs at market rate, a deductible that equals the difference between the person's annual household income and 200% of the federal poverty line; after this is paid, the persons must pay an additional \$750 deductible for prescription drugs at the reduced rate; and the persons may then obtain additional prescription drugs in the remaining amount of the 12-month period by paying a copayment of \$10 for each drug that is a generic drug and \$20 for each drug that is not a generic drug. As a condition of participation by a pharmacy or pharmacist in the MA program, the pharmacy or pharmacist may not charge persons who are eligible for prescription drug assistance more than these amounts; as a part of the costs chargeable for the deductible, the pharmacy or pharmacist may include a dispensing fee, but may not charge a dispensing fee after the deductible is met. If a person who is eligible has other available coverage for prescription drugs, the program does not apply to the costs for prescription drugs available under that other coverage.

*a
\$30
annual
enrollment
fee
and*

Under the bill, DHFS or an entity with which DHFS contracts must provide to drug manufacturers material designed for use in entering into rebate agreements that are modeled on federal medicaid rebate agreements, under which the manufacturer must make payments to the state treasurer for deposit in the general fund for the manufacturer's drugs that are prescribed and purchased under the program. The amount of the rebate payment under the agreement is required to be determined by the method that is specified under the federal medicaid rebate agreements. The amounts of the rebate payments must, in turn, together with general purpose revenues under a biennial appropriation created under the bill, be paid by DHFS to pharmacies or pharmacists that have reduced charges for prescription drugs for the eligible persons. Payment is at the ~~medical assistance rate~~ *plus 5%*, minus any copayment made, plus a dispensing fee.

Under the bill, DHFS is authorized to enter into a contract with an entity to perform DHFS' duties and exercise its powers, other than rule making, under the prescription drug assistance program. DHFS must, under the bill, promulgate rules that specify the criteria to be used to determine household income for persons eligible for prescription drug assistance. Prescription drugs for which the reduced charges must be made are those that are available as an MA benefit and that are

average wholesale price minus 5%, or the maximum allowable cost, as determined by DHFS whichever is less

average wholesale price minus 5%, or the maximum cost, as determined by DHFS, whichever is less,

manufactured by a manufacturer that enters into a rebate agreement with DHFS. DHFS must calculate and transmit to pharmacies and pharmacists that participate in the MA program the prices at the ~~medical assistance rate plus 5%~~ that must be charged to certain eligible persons in meeting the deductible for prescription drugs and must periodically update this information and transmit the updated information to pharmacies and pharmacists. DHFS must monitor compliance by pharmacies and pharmacists with the requirement to charge eligible persons for the specified prescription drugs at the reduced amounts and annually report to the legislature concerning the compliance. DHFS also must promulgate rules that establish prohibitions against fraud that are substantially similar to MA fraud provisions; the bill specifies penalties applicable to violations of these prohibitions.

If federal law is changed to provide coverage for outpatient prescription drugs as a benefit under medicare or another program, DHFS must provide a report to the legislature that analyzes the differences between the federal program and the program under the bill and that provides recommendations concerning alignment, if any, of the differences. DHFS must also report quarterly to the legislature concerning expenditures of general purpose revenues, revenues from manufacturer rebates, and case loads under the prescription drug assistance program. The bill appropriates \$1,000,000 in general purpose revenues in fiscal year 2001-01 to DHFS for administration of the program. Further, the bill appropriates \$1,000,000 in general purpose revenues to the joint committee on finance and authorizes DHFS to submit a proposal for review and approval by the department of administration and by the joint committee on finance, for expenditure of these moneys.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
- 2 the following amounts for the purposes indicated:

2001-02

2002-03

**20.435 Health and family services, department
of**

**(4) HEALTH SERVICES PLANNING, REGULATION AND
DELIVERY; HEALTH CARE FINANCING**

(bv) Prescription drug assistance for

(7) elderly; aids GPR B -0- 21,400,000
(jc) ~~Prescription drug assistance for~~ elderly; fees; administration PR A -0- 39,200,000
SECTION 2. 20.435 (4) (bv) of the statutes is created to read: -0- 1,000,000

20.435 (4) (bv) *Prescription drug assistance for elderly; aids*. Biennially, the amounts in the schedule for payment to pharmacies and pharmacists under s. 49.688 (7) for prescription drug assistance for elderly persons.

SECTION 3. 20.435 (4) (j) of the statutes is created to read:

20.435 (4) (j) *Prescription drug assistance for elderly; manufacturer rebates*.

All moneys received from rebate payments by manufacturers under s. 49.688 (6), to be used for payment to pharmacies and pharmacists under s. 49.688 (7) for prescription drug assistance for elderly persons.

SECTION 4. 20.435 (4) (jb) of the statutes is created to read:

20.435 (4) (jb) *Prescription drug assistance for elderly; enrollment fees*. All moneys received from payment of enrollment fees under s. 49.688 (3) (a), to be used

~~for administration of the program under s. 49.688~~

SECTION 5. 49.688 of the statutes is created to read:

49.688 Prescription drug assistance for low-income elderly persons.

(1) In this section:

(a) "Generic name" has the meaning given in s. 450.12 (1) (b).

for payment to
pharmacies and pharmacists under s. 49.688
(7) for prescription drug assistance for elderly persons

INSERT 4-20

(b) "Poverty line" means the nonfarm federal poverty line for the continental United States, as defined by the federal department of labor under 42 USC 9902 (2).

(c) "Prescription drug" means a prescription drug, as defined in s. 450.01 (20), that is included in the drugs specified under s. 49.46 (2) (b) 6. h. and that is manufactured by a manufacturer that enters into a rebate agreement in force under

sub. (6). *average wholesale price minus 5% or the maximum allowable cost, as determined by the department, whichever is less*

(d) "Prescription order" has the meaning given in s. 450.01 (21).

(e) "Program payment rate" means the ~~rate of payment made for the identical drug specified under s. 49.46 (2) (b) 6. h. plus 5%~~

(2) (a) A person to whom all of the following applies is eligible to purchase a prescription drug for the amounts specified in sub. (5) (a) 1. and 2.:

1. The person is a resident, as defined in s. 27.01 (10) (a), of this state.
2. The person is at least 65 years of age.
3. The person is not a recipient of medical assistance.
4. The person's annual household income, as determined by the department, does not exceed 200% of the poverty line for a family the size of the person's eligible family.

5. The person pays the program enrollment fee specified in sub. (3) (a).

(b) A person to whom par. (a) 1. to 3. and 5. applies, but whose annual household income, as determined by the department, exceeds 200% of the federal poverty line for a family the size of the person's eligible family, is eligible to purchase a prescription drug at the amounts specified in sub. (5) (a) 4. only during the remaining amount of any 12-month period in which the person has first paid the annual deductible specified in sub. (3) (b) 2. a. in purchasing prescription drugs at the retail price and has then paid the annual deductible specified in sub. (3) (b) 2. b.

, plus a dispensing fee that is equal to the dispensing fee permitted to be charged for legend drugs for which coverage is provided under s. 49.46 (2) (b) 6. h.

\$30, except, for a person whose annual household income, as determined by the department, is 125% or less of the federal poverty line for a family the size of the person's eligible family, a program enrollment fee of \$15

(3) Program participants shall pay all of the following:

(a) For each 12-month benefit period, a program enrollment fee of ~~\$20~~

(b) 1. For each 12-month benefit period, for a person specified in sub. (2) (a), a deductible for prescription drugs of \$750, except that a person whose annual household income, as determined by the department, is 125% or less of the federal poverty line for a family the size of the person's eligible family pays no deductible.

2. For each 12-month benefit period, for a person specified in sub. (2) (b), a deductible for prescription drugs that equals all of the following:

a. The difference between the person's annual household income and 200% of the federal poverty line for a family the size of the person's eligible family.

b. Seven hundred fifty dollars.

(c) After payment of any applicable deductible under par. (b), all of the following:

1. For each prescription drug that bears only a generic name, a copayment of \$10, except that, for a person whose annual household income, as determined by the department, is 125% or less of the federal poverty line for a family the size of the person's eligible family, a copayment of \$5.

2. For each prescription drug that does not bear only a generic name, a copayment of \$20, except that, for a person whose annual household income, as determined by the department, is 125% or less of the federal poverty line for a family the size of the person's eligible family, a copayment of \$10.

(d) Notwithstanding s. 49.002, if a person who is eligible under this section has other available coverage for payment of a prescription drug, this section applies only to costs for prescription drugs for the person that are not covered under the person's other available coverage.

(4) The department shall devise and distribute a form for application for the program under sub. (2), shall determine eligibility for each 12-month benefit period of applicants, and shall issue to eligible persons a prescription drug card for use in purchasing prescription drugs, as specified in sub. (5). The department shall promulgate rules that specify the criteria to be used to determine annual household income under sub. (2) (a) 4. and (b) and (3) (b) 1. and (c) 1. and 2.

(5) (a) Beginning July 1, 2002, as a condition of participation by a pharmacy or pharmacist in the program under s. 49.45, 49.46, or 49.47, the pharmacy or pharmacist may not charge a person who presents a valid prescription order and a card indicating that he or she meets eligibility requirements under sub. (2) an amount for a prescription drug under the order that exceeds the following:

1. For a deductible, as specified in sub. (3) (b) 1. and 2. b., the program payment rate, ~~plus a dispensing fee that is equal to the dispensing fee permitted to be charged for prescription drugs for which coverage is provided under s. 49.46 (2) (b) 6. h.~~

2. After any applicable deductible under subd. 1. is charged, the copayment, as applicable, that is specified in sub. (3) (c) 1. or 2. No dispensing fee, ~~as specified under subd. 1,~~ may be charged to a person under this subdivision.

3. For a deductible, as specified in sub. (3) (b) 2. a., the retail price.

4. After the deductible under subd. 3. is charged, the copayment, as applicable, that is specified in sub. (3) (c) 1. or 2. No dispensing fee, ~~as specified under subd. 1,~~ may be charged to a person under this subdivision.

(b) The department shall calculate and transmit to pharmacies and pharmacists that are certified providers of medical assistance amounts that may be used in calculating charges under par. (a). The department shall periodically update this information and transmit the updated amounts to pharmacies and pharmacists.

(6) The department or an entity with which the department contracts shall provide to a drug manufacturer that sells drugs for prescribed use in this state material designed for use by the manufacturer in entering into a rebate agreement with the department or entity that is modeled on the rebate agreement specified under 42 USC 1396r-8. A rebate agreement under this subsection shall include all of the following as requirements:

(a) That the manufacturer shall make rebate payments for each prescription drug of the manufacturer that is prescribed for and purchased by persons who meet criteria under sub. (2) (a) and by persons who meet criteria under sub. (2) (b) and have paid the deductible under sub. (3) (b) 2. a., to the state treasurer to be credited to the appropriation under s. 20.435 (4) (j), each calendar quarter or according to a schedule established by the department.

(b) That the amount of the rebate payment shall be determined by a method specified in 42 USC 1396r-8 (c).

(15) (7) From the appropriation accounts under s. 20.435 (4) (bv) ~~and~~ ^(j) ~~(j)~~, ^{and (jb)} beginning July 1, 2002, the department shall, under a schedule that is identical to that used by the department for payment of pharmacy provider claims under medical assistance, provide to pharmacies and pharmacists payments for prescription drugs sold by the pharmacies or pharmacists to persons eligible under sub. (2) who have paid the deductible specified under sub. (3) (b) 1. or 2. or who, under sub. (3) (b) 1., are not required to pay a deductible. The payment for each prescription drug under this subsection shall be at the program payment rate, minus any copayment paid by the person under sub. (5) (a) 2. or 4., ~~plus a dispensing fee as specified in sub. (5) (a)~~ ^{plus, if applicable, incentive payments that are similar to those provided} under s. 49.45 (8v). The department shall devise and distribute a claim form for

1 reports by pharmacies and pharmacists under this subsection and may limit
2 payment under this subsection to those prescription drugs for which payment claims
3 are submitted by pharmacies or pharmacists directly to the department. The
4 department may apply to the program under this section the same utilization and
5 cost control procedures that apply under rules promulgated by the department to
6 medical assistance under subch. IV.

7 (8) The department shall, under methods promulgated by the department by
8 rule, monitor compliance by pharmacies and pharmacists that are certified providers
9 of medical assistance with the requirements of sub. (5) and shall annually report to
10 the legislature under s. 13.172 (2) concerning the compliance. The report shall
11 include information on any pharmacies or pharmacists that discontinue
12 participation as certified providers of medical assistance and the reasons given for
13 the discontinuance.

14 (9) (a) The department shall promulgate rules relating to prohibitions on fraud
15 that are substantially similar to applicable provisions under s. 49.49 (1) (a).

16 (b) A person who is convicted of violating a rule promulgated by the department
17 under par. (a) in connection with that person's furnishing of prescription drugs under
18 this section may be fined not more than \$25,000, or imprisoned for not more than 7
19 years and 6 months, or both.

20 (c) A person other than a person specified in par. (b) who is convicted of violating
21 a rule promulgated by the department under par. (a) may be fined not more than
22 \$10,000, or imprisoned for not more than one year, or both.

23 (10) If federal law is amended to provide coverage for prescription drugs for
24 outpatient care as a benefit under medicare or to provide similar coverage under
25 another program, the department shall submit to appropriate standing committees

1 of the legislature under s. 13.172 (3) a report that contains an analysis of the
2 differences between such a federal program and the program under this section and
3 that provides recommendations concerning alignment, if any, of the differences.

4 (11) Beginning October 1, 2002, the department shall by October 1, January
5 1, April 1, and July 1 annually submit to appropriate standing committees of the
6 legislature under s. 13.172 (3) a report concerning expenditures of general purpose
7 revenues, receipt of revenues from manufacturers under rebate agreements, and
8 program participant case loads under the program under this section.

9 (12) Except as provided in subs. (8) to (11), and except for the department's
10 rule-making requirements and authority, the department may enter into a contract
11 with an entity to perform the duties and exercise the powers of the department under
12 this section.

2nd
second

13 **SECTION 6. Nonstatutory provisions.**

14 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. Before the first
15 day of the ~~first~~ month following publication of the biennial budget act, the
16 department of health and family services may develop and submit to the department
17 of administration a proposal for expenditure of the funds appropriated under section
18 20.865 (4) (a) of the statutes for administration of the prescription drug assistance
19 for low-income elderly program under section 49.688 of the statutes, as created by
20 this act. The department of administration may approve, disapprove, or modify and
21 approve any proposal it receives under this subsection. If the department of
22 administration approves the proposal, the department shall submit the proposal,
23 together with any modifications, to the cochairpersons of the joint committee on
24 finance. If the cochairpersons of the committee do not notify the secretaries of
25 administration and health and family services within 14 working days after

1 receiving the proposal that the cochairpersons have scheduled a meeting for the
2 purpose of reviewing the proposal, the secretary of administration may transfer from
3 the appropriation under section 20.865 (4) (a) of the statutes to the appropriation
4 under section 20.435 (4) (a) of the statutes the amount specified in the proposal or
5 any proposed modifications of the proposal for expenditure as specified in the
6 proposal or any proposed modifications of the proposal and may approve any position
7 authority specified in the proposal or any proposed modifications of the proposal. If,
8 within 14 working days after receiving the proposal, the cochairpersons notify the
9 secretaries of administration and health and family services that the cochairpersons
10 have scheduled a meeting for the purpose of reviewing the proposal, the secretary of
11 administration may not transfer any amount specified in the proposal or any
12 proposed modifications of the proposal from the appropriation under section 20.865
13 (4) (a) of the statutes and may not approve any position authority specified in the
14 proposal or any proposed modifications of the proposal, except as approved by the
15 committee.

16 **SECTION 7. Appropriation changes.**

17 (1) PRESCRIPTION DRUG ASSISTANCE FOR LOW-INCOME ELDERLY; ADMINISTRATION. In
18 the schedule under section 20.005 (3) of the statutes for the appropriation to the joint
19 committee on finance under section 20.435 (4) (a) of the statutes, as affected by the
20 acts of 1999, the dollar amount is increased by \$1,000,000 for fiscal year 2001–02 to
21 increase funding for administration of the prescription drug assistance for elderly
22 program under section 49.688 of the statutes, as created by this act.

23 (2) PRESCRIPTION DRUG ASSISTANCE FOR LOW-INCOME ELDERLY; ADDITIONAL
24 ADMINISTRATION. In the schedule under section 20.005 (3) of the statutes for the
25 appropriation to the joint committee on finance under section 20.865 (4) (a) of the

1 statutes, as affected by the acts of 2001, the dollar amount is increased by \$1,000,000
2 for fiscal year 2001–02 to increase funding for administration of the prescription
3 drug assistance for elderly program under section 49.688 of the statutes, as created
4 by this act.

5 **SECTION 8. Effective dates.** This act takes effect on the ^{2nd} day after publication,
6 except as follows:

7 (1) PRESCRIPTION DRUG ASSISTANCE FOR LOW-INCOME ELDERLY. The treatment of
8 section 20.435 (4) (bv) of the statutes takes effect on July 1, 2002.

9 (END)

of the 2001-03 biennial
budget bill

^{CS}
SECTION # . CR; 20.435(4)(j)

^② 20.435(4)(j) ^① Prescription drug assistance for

^① elderly; fees; administration. ~~The amounts in #3~~

~~Schedule~~ From payment of enrollment fees under s. 49.688
the amounts in the schedule

(3), ~~for~~ for administration of the program under

s. 49.6880



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
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MADISON, WI 53701-2037

STEPHEN R. MILLER
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LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

May 24, 2001

MEMORANDUM

To: Senator Roessler

From: Debora A. Kennedy, Managing Attorney

Re: LRB-3107/1 Prescription drugs for elderly program

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

____ JACKET FOR ASSEMBLY ☒ JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0137 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.